# MINOR IMPROVEMENTS AND TECHNICAL CHANGES IN THE SOCIAL SECURITY ACT

## HEARING

BEFORE THE

SUBCOMMITTEE ON SOCIAL SECURITY

OF THE

## COMMITTEE ON WAYS AND MEANS
## HOUSE OF REPRESENTATIVES

NINETY-NINTH CONGRESS

FIRST SESSION

ON

## H.R. 1641

TO AMEND TITLE II OF THE SOCIAL SECURITY ACT AND RELATED PROVISIONS OF LAW TO MAKE MINOR IMPROVEMENTS AND NECESSARY TECHNICAL CHANGES

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APRIL 1, 1985

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# MINOR IMPROVEMENTS AND TECHNICAL CHANGES IN THE SOCIAL SECURITY ACT

MONDAY, APRIL 1, 1985

HOUSE OF REPRESENTATIVES,
COMMITTEE ON WAYS AND MEANS,
SUBCOMMITTEE ON SOCIAL SECURITY,
*Washington, DC.*

The subcommittee met, pursuant to call, at 3:35 p.m., in room H-137, the Capitol, Hon. James R. Jones (chairman of the subcommittee) presiding.

[The press release announcing the hearing and a copy of the bill, H.R. 1641, follow:]

[For immediate release, Thursday, March 21, 1985]

HON. JAMES R. JONES (D., OK), CHAIRMAN, SUBCOMMITTEE ON SOCIAL SECURITY, COMMITTEE ON WAYS AND MEANS, U.S. HOUSE OF REPRESENTATIVES, ANNOUNCES A PUBLIC HEARING ON H.R. 1641, A BILL TO MAKE MINOR IMPROVEMENTS AND TECHNICAL CHANGES IN THE SOCIAL SECURITY ACT

The Honorable James R. Jones (D., Okla.), Chairman, Subcommittee on Social Security, Committee on Ways and Means, U.S. House of Representatives, announces a public hearing on H.R. 1641, a bill to make minor and technical changes in the Social Security Act. The hearing will be held on Monday, April 1, 1985, at 3:00 p.m. in H-137, the Capitol.

BACKGROUND

H.R. 1641 contains the following major provisions:

—a 5-year extension of the authority for the Social Security Administration to waive provisions of the Act to conduct demonstration projects designed to promote the vocational rehabilitation and the return to work of disability beneficiaries;

—relief for disabled widows who were inadvertently made ineligible for Supplemental Security Income and medicaid benefits by an increase in their social security benefits in the 1983 Social Security Amendments;

—a substitution of a special disability Advisory Council for the regular quadrennial advisory council required by law to be appointed this year;

—extension of current law's treatment of adopted grandchildren to adopted great-grandchildren;

—correction of a technical error in the Social Security Amendments of 1983 which resulted in tax treatment of social security benefits received by citizens of American Samoa which differs from that of all other territories.

The bill also contains several other minor clerical and technical changes to clarify legislative intent in several areas, and to correct unintended anomalies in the areas of reentitlement of childhood disability beneficiaries, and the disability family maximum benefit computation.

*Details for submission of requests to be heard*

Individuals and organizations interested in presenting oral testimony before the Subcommittee must submit their requests to be heard by telephone to Harriett Lawler [(202) 225-3627] no later than Wednesday, March 27, 1985, to be followed by a formal written request to Joseph K. Dowley, Chief Counsel, Committee on Ways

and Means, U.S. House of Representatives, 1102 Longworth House Office Building, Washington, D.C. 20515. Notification to those scheduled to appear will be made by telephone as soon as possible after the filing deadline.

In order to assure the most productive use of the limited amount of time available to question hearing witnesses, all witnesses scheduled to appear before the Subcommittee are required to submit 50 copies of their prepared statements to the Committee office, room 1102, Longworth House Office Building, at least 24 hours in advance of their scheduled appearances. Failure to comply with this requirement may result in the witness being denied the opportunity to testify in person.

Requests to be heard, prepared statements to be presented in person, and statements filed for the printed record of the hearing, must contain the following information:

1. The name, full address, and capacity in which the witness will appear, as well as a telephone number where the witness or a designated representative may be reached;
2. A list of any clients or persons, or any organization for whom the witness appears; and
3. A topical outline or summary of comments and recommendations.

*Written statements in lieu of personal appearance*

Persons submitting written statements for the printed record of the hearing should submit at least six copies by the close of business, Monday, April 1, 1985, to Joseph K. Dowley, Chief Counsel, Committee on Ways and Means, U.S. House of Representatives, 1102 Longworth House Office Building, Washington, D.C. 20515. (See other requirements enumerated above.) If those filing written statements for the record of the printed hearing wish to have their statements distributed to the press and the interested public, they may provide 50 additional copies for this purpose to the Committee office before the hearing begins.

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99TH CONGRESS
1ST SESSION

# H. R. 1641

To amend title II of the Social Security Act and related provisions of law to make minor improvements and necessary technical changes.

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IN THE HOUSE OF REPRESENTATIVES

MARCH 21, 1985

Mr. JONES of Oklahoma introduced the following bill; which was referred to the Committee on Ways and Means

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# A BILL

To amend title II of the Social Security Act and related provisions of law to make minor improvements and necessary technical changes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. SHORT TITLE.**

This Act may be cited as the "Social Security Minor and Technical Changes Act of 1985".

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Sec. 1. Short title.
Sec. 2. Demonstration projects involving the disability insurance program.
Sec. 3. Preservation of benefit status for disabled widows and widowers who lost SSI benefits because of 1983 changes in actuarial reduction formula.
Sec. 4. Disability advisory council.
Sec. 5. Taxation of social security benefits received by certain citizens of possessions of the United States.

Sec. 6. Application of dependency test to adopted great-grandchildren for purposes of child's insurance benefits.
Sec. 7. Elimination of requirement for publication of revisions in pre-1979 benefit table.
Sec. 8. Fail-safe formula clarification.
Sec. 9. Extension of fifteen-month reentitlement period to childhood disability beneficiaries subsequently entitled.
Sec. 10. Charging of work deductions against auxiliary benefits in disability cases.
Sec. 11. Perfecting amendments to disability offset provision.
Sec. 12. State coverage agreements.
Sec. 13. General effective date.

**SEC. 2. DEMONSTRATION PROJECTS INVOLVING THE DISABILITY INSURANCE PROGRAM.**

(a) EXTENSION OF WAIVER AUTHORITY.—Section 505(a)(3) of the Social Security Disability Amendments of 1980 is amended by inserting "which is initiated before June 10, 1990," after "demonstration project under paragraph (1)".

(b) INTERIM REPORTS.—Section 505(a)(4) of such Amendments is amended to read as follows:

"(4) On or before June 9, 1985, and on or before June 9 in each of the years 1986, 1987, 1988, and 1989, the Secretary shall submit to the Congress an interim report on the progress of the experiments and demonstration projects carried out under this subsection together with any related data and materials which the Secretary may consider appropriate.".

(c) FINAL REPORT.—Section 505(c) of such Amendments is amended by striking out "under this section no later than five years after the date of the enactment of this Act"

and inserting in lieu thereof "under subsection (a) no later than June 9, 1990".

(d) INCORPORATION OF CERTAIN REPORTS INTO SECRETARY'S ANNUAL REPORT TO CONGRESS.—Section 1110(b) of the Social Security Act is amended by adding at the end thereof the following new paragraph:

"(3) All reports of the Secretary with respect to projects carried out under this subsection shall be incorporated into the Secretary's annual report to the Congress required by section 704.".

**SEC 3. PRESERVATION OF BENEFIT STATUS FOR DISABLED WIDOWS AND WIDOWERS WHO LOST SSI BENEFITS BECAUSE OF 1983 CHANGES IN ACTUARIAL REDUCTION FORMULA.**

(a) IN GENERAL.—In addition to other requirements imposed by law as a condition for the approval of any State plan under title XIX of the Social Security Act, there is hereby imposed the requirement (and each such State plan shall be deemed to require) that medical assistance under such plan shall be provided to any individual, for any month which begins more than two months after the date of the enactment of this Act and for which such individual is entitled to a monthly insurance benefit based on disability under section 202 (e) or (f) of such Act but is not eligible for benefits under title XVI of such Act, in like manner and subject

to the same terms and conditions as are applicable under such State plan in the case of individuals who are eligible for and receiving benefits under such title XVI for such month, if such individual—

(1) was both (A) entitled to a monthly insurance benefit under title II of the Social Security Act for December 1983 and (B) eligible for an SSI benefit under title XVI of such Act in January 1984;

(2)(A) was entitled to a widow's or widower's insurance benefit under section 202 (e) or (f) of such Act for January 1984, and (B) became ineligible for SSI benefits at the close of that month solely because of the increase in the amount of his or her widow's or widower's insurance benefits which resulted from the amendments (eliminating the additional reduction factor for disabled widows and widowers under age sixty) made by section 134 of the Social Security Amendments of 1983 (Public Law 98–21);

(3) has continued (from the first month for which the increase described in paragraph (2)(B) was reflected in the widow's or widower's benefits involved through the month for which his or her eligibility for medical assistance is being determined) to receive widow's or widower's insurance benefits under such section 202 (e) or (f);

(4) would be eligible for SSI benefits for the month involved if the amount of the increase described in paragraph (2)(B) in his or her widow's or widower's insurance benefits (and the portion of any subsequent cost-of-living adjustment in such benefits under section 215(i) of such Act which is attributable to the increase so described) were disregarded; and

(5) files a written application for protection under this subsection, in such manner and form as the Secretary may prescribe, after the close of the second month following the month in which this Act is enacted and before the close of the fourteenth month following such month.

Solely for purposes of this subsection, payments of the type described in section 1616(a) of the Social Security Act or of the type described in section 212(a) of Public Law 93-66 shall be deemed to be SSI benefits under title XVI of the Social Security Act.

(b) IDENTIFICATION OF BENEFICIARIES.—As soon as possible after the enactment of this Act, the Secretary shall provide each State with the names of all individuals receiving widow's or widower's insurance benefits under section 202 (e) or (f) of the Social Security Act on the basis of disability who might qualify for medical assistance under the plan of that State approved under title XIX of such Act by reason of

subsection (a). Each State, using the information so provided, shall promptly inform all individuals who may qualify for medical assistance under its plan by reason of subsection (a) of their right to make application for such assistance, solicit their applications for such assistance, and make the necessary determinations of such individuals' eligibility for such assistance under subsection (a) and under such title XIX.

**SEC. 4. DISABILITY ADVISORY COUNCIL.**

(a) APPOINTMENT OF COUNCIL.—Within ninety days after the date of the enactment of this Act, the Secretary of Health and Human Services shall appoint a special Disability Advisory Council.

(b) MEMBERSHIP OF COUNCIL.—The Disability Advisory Council shall consist of a Chairman and not more than twelve other persons, appointed by the Secretary without regard to the provisions of title 5, United States Code, governing appointments in the competitive service. The appointed members shall, to the extent possible, represent organizations of employers and employees in equal numbers, medical and vocational experts from the public or private sector (or from both such sectors), organizations representing disabled people, and the public. The Council shall meet as often as may be necessary for the performance of its duties under this section, but not less often than quarterly.

(c) DUTIES OF COUNCIL.—(1) The Advisory Council shall conduct studies and make recommendations with respect to the medical and vocational aspects of disability under both title II and title XVI of the Social Security Act, including studies and recommendations relating to—

(A) the effectiveness of vocational rehabilitation programs for recipients of disability insurance benefits or supplemental security income benefits;

(B) the question of using specialists for completing medical and vocational evaluations at the State agency level in the disability determination process, including the question of requiring, in cases involving impairments other than mental impairments, that the medical portion of each case review (as well as any applicable assessment of residual functional capacity) be completed by an appropriate medical specialist employed by the appropriate State agency before any determination can be made with respect to the impairment involved;

(C) alternative approaches to work evaluation in the case of applicants for benefits based on disability and recipients of such benefits undergoing reviews of their cases, including immediate referral of any such applicant or recipient to a vocational rehabilitation agency for services at the same time he or she is re-

ferred to the appropriate State agency for a disability determination;

(D) the feasibility and appropriateness of providing work evaluation stipends for applicants for and recipients of benefits based on disability in cases where extended work evaluation is needed prior to the final determination of their eligibility for such benefits or for further rehabilitation and related services;

(E) the standards, policies, and procedures which are applied or used by the Secretary of Health and Human Services with respect to work evaluations in order to determine whether such standards, policies, and procedures will provide appropriate screening criteria for work evaluation referrals in the case of applicants for and recipients of benefits based on disability; and

(F) possible criteria for assessing the probability that an applicant for or recipient of benefits based on disability will benefit from rehabilitation services, taking into consideration not only whether the individual involved will be able after rehabilitation to engage in substantial gainful activity but also whether rehabilitation services can reasonably be expected to improve the individual's functioning so that he or she will be

able to live independently or work in a sheltered environment.

(2) For purposes of this subsection, "work evaluation" includes (with respect to any individual) a determination of—

(A) such individual's skills,

(B) the work activities or types of work activity for which such individual's skills are insufficient or inadequate,

(C) the work activities or types of work activity for which such individual might potentially be trained or rehabilitated,

(D) the length of time for which such individual is capable of sustaining work (including, in the case of the mentally impaired, the ability to cope with the stress of competitive work), and

(E) any modifications which may be necessary, in work activities for which such individual might be trained or rehabilitated, in order to enable him or her to perform such activities.

(d) PROVISION OF ASSISTANCE TO COUNCIL; COMPENSATION OF MEMBERS.—(1) The Disability Advisory Council is authorized to engage such technical assistance, including actuarial services, as may be required to carry out its functions, and the Secretary of Health and Human Services shall, in addition, make available to the Council such secretarial,

clerical, and other assistance and such actuarial and other pertinent data prepared by the Department of Health and Human Services as the Council may require to carry out such functions.

(2) Appointed members of the Council, while serving on business of the Council (inclusive of traveltime) shall receive compensation at rates fixed by the Secretary, but not exceeding $100 per day, and, while so serving away from their homes or regular places of business, they may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5, United States Code, for persons in the Government employed intermittently.

(e) REPORTS.—The Disability Advisory Council shall submit reports (including any interim reports the Council may have issued) of its findings and recommendations to the Secretary of Health and Human Services not later than December 31, 1986; and such reports and recommendations shall thereupon be transmitted to the Congress and to the Board of Trustees of the Federal Disability Insurance Trust Fund.

(f) TERMINATION.—After the date of the transmittal to the Congress of the reports required by subsection (e), the Disability Advisory Council shall cease to exist.

(g) CONFORMING AMENDMENTS.—(1) Section 706 of the Social Security Act is amended—

(A) by inserting "except as provided in subsection (e)," immediately before "the Secretary shall appoint" in subsection (a); and

(B) by adding at the end thereof the following new subsection:

"(e) No Advisory Council on Social Security shall be appointed under subsection (a) in 1985 (or in any subsequent year prior to 1989).".

(2) Section 12 of the Social Security Disability Benefits Reform Act of 1984 is repealed.

**SEC. 5. TAXATION OF SOCIAL SECURITY BENEFITS RECEIVED BY CERTAIN CITIZENS OF POSSESSIONS OF THE UNITED STATES.**

(a) GENERAL RULE.—Section 932 of the Internal Revenue Code of 1954 (relating to citizens of possessions of the United States) is amended by redesignating subsection (c) as subsection (d) and by inserting after subsection (b) the following new subsection:

"(c) TAXATION OF SOCIAL SECURITY BENEFITS.—For purposes of determining liabilities to the United States, any social security benefit (as defined in section 86(d)) received by an individual described in subsection (a) shall be exempt from taxation under this subtitle."

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(b) CROSS REFERENCE.—Paragraph (3) of section 871(a) of such Code is amended by adding at the end thereof the following new sentence:

**"For treatment of certain citizens of possessions of the United States, see section 932(c)."**

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to benefits received after December 31, 1983, in taxable years ending after such date.

**SEC. 6. APPLICATION OF DEPENDENCY TEST TO ADOPTED GREAT-GRANDCHILDREN FOR PURPOSES OF CHILD'S INSURANCE BENEFITS.**

(a) TREATMENT OF GRANDCHILDREN AND GREAT-GRANDCHILDREN ALIKE.—Section 202(d)(8)(D)(ii)(III) of the Social Security Act is amended by inserting "or great-grandchild" after "grandchild".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply with respect to benefits for which application is filed after the date of the enactment of this Act.

**SEC. 7. ELIMINATION OF REQUIREMENT FOR PUBLICATION OF REVISIONS IN PRE-1979 BENEFIT TABLE.**

Section 215(i)(4) of the Social Security Act is amended by striking out "the Secretary shall publish" and all that follows in the last sentence and inserting in lieu thereof the following: "the Secretary shall revise the table of benefits contained in subsection (a), as in effect in December 1978, in accordance with the requirements of paragraph (2)(D) of this

subsection as then in effect, except that the requirement in such paragraph (2)(D) that the Secretary publish such revision of the table of benefits in the Federal Register shall not apply.".

**SEC. 8. FAIL-SAFE FORMULA CLARIFICATION.**

Section 709(b)(1) of the Social Security Act is amended to read as follows:

"(1) the balance in such Trust Fund as of the beginning of such year, including the taxes transferred under section 201(a) on the first day of such year and reduced by the outstanding amount of any loan (including interest thereon) theretofore made to such Trust Fund under section 201(l) or 1817(j), to".

**SEC. 9. EXTENSION OF 15-MONTH REENTITLEMENT PERIOD TO CHILDHOOD DISABILITY BENEFICIARIES SUBSEQUENTLY ENTITLED.**

(a) IN GENERAL.—Section 202(d)(6)(E) of the Social Security Act is amended by striking out "the third month following the month in which he ceases to be under such disability" and inserting in lieu thereof "the termination month (as defined in paragraph (1)(G)(i)), subject to section 223(e),".

(b) CONFORMING AMENDMENT.—Section 223(e) of such Act is amended by inserting "(d)(6)(B)," after "(d)(1)(B)(ii),".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to individuals whose period of trial work (as defined in section 222(c) of the Social Security Act) ends on or after the date of the enactment of this Act.

**SEC. 10. CHARGING OF WORK DEDUCTIONS AGAINST AUXILIARY BENEFITS IN DISABILITY CASES.**

(a) IN GENERAL.—(1) Section 203(a)(4) of the Social Security Act is amended by striking out "preceding" in the first sentence.

(2) Section 203(a)(6) of such Act is amended—

(A) by striking out "and (5)" and inserting in lieu thereof "(4), and (5)"; and

(B) by striking out ", whether or not" and all that follows down through "further reduced" and inserting in lieu thereof "shall be reduced".

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall apply with respect to benefits payable for months after December 1985.

**SEC. 11. PERFECTING AMENDMENTS TO DISABILITY OFFSET PROVISION.**

(a) IN GENERAL.—(1) Section 224(a)(2) of the Social Security Act is amended to read as follows:

"(2) such individual is entitled for such month to—

"(A) periodic benefits on account of his or her total or partial disability (whether or not permanent) under a workmen's compensation law or plan of the United States or a State, or

"(B) periodic benefits on account of his or her total or partial disability (whether or not permanent) under any other law or plan of the United States, a State, a political subdivision (as that term is used in section 218(b)(2)), or an instrumentality of two or more States (as that term is used in section 218(k)), other than (i) benefits payable under title 38, United States Code, (ii) benefits payable under a program of assistance which is based on need, (iii) benefits based on service all or substantially all of which was included under an agreement entered into by a State and the Secretary under section 218, and (iv) benefits under a law or plan of the United States based on service all or part of which is employment as defined in section 210,".

(2) Section 224(a)(2) of such Act (as amended by paragraph (1) of this subsection) is further amended by striking out "all or part of which" in clause (iv) and inserting in lieu thereof "all or substantially all of which".

(b) EFFECTIVE DATES.—(1) The amendment made by subsection (a)(1) shall be effective as though it had been included or reflected in the amendment made by section 2208(a)(3) of the Omnibus Budget Reconciliation Act of 1981.

(2) The amendment made by subsection (a)(2) shall apply only with respect to individuals whose disability (on the basis of which their benefits under section 223 are payable) begins after the month in which this Act is enacted.

**SEC. 12. STATE COVERAGE AGREEMENTS.**

(a) MAXIMUM PERIOD OF RETROACTIVE COVERAGE.—Section 218(f)(1) of the Social Security Act is amended by striking out "is agreed to by the Secretary and the State" and inserting in lieu thereof "is mailed or delivered by other means to the Secretary".

(b) POSITIONS COMPENSATED SOLELY ON FEE BASIS.—Section 218(u)(3) of such Act is amended by striking out "is agreed to by the Secretary and the State" and inserting in lieu thereof "is mailed or delivered by other means to the Secretary".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to agreements and modifications of agreements which are mailed or delivered to the Secretary of Health and Human Services (under section 218 of

the Social Security Act) on or after the date of the enactment of this Act.

**SEC. 13. GENERAL EFFECTIVE DATE.**

Except as otherwise specifically provided, this Act and the amendments made by this Act shall take effect on the first day of the month following the month in which this Act is enacted.

○

Chairman JONES. We will go ahead and start the hearing.

The Subcommittee on Social Security will receive testimony concerning H.R. 1641, a bill to make minor and technical changes in the Social Security Act. None of the provisions in this bill, or proposed to be added to the bill, are controversial, and all are designed to make small corrections in the Social Security program at little or no cost. The most significant provision, to extend demonstration authority for the Social Security Administration to conduct projects in vocational rehabilitation for disability beneficiaries, has great potential for aiding the Congress and the administration in making future improvements in the disability program.

The other provisions in the bill attempt to simplify the program and prevent certain unintended results of previous changes in the law, particularly with respect to disabled widows and widowers who were inadvertently deprived of Medicaid benefits by a change in the 1983 amendments. After receiving testimony on these provisions, I hope to move quickly in the subcommittee to approve the bill, and then in the full committee at the first opportunity.

I welcome first of all our Acting Commissioner, Martha McSteen to the subcommittee. We are pleased to receive your testimony. It will be included in full. If you would wish to summarize your testimony we would appreciate it.

I would like to ask our colleague, Mr. Daub, if he has any statement he would care to make.

Mr. DAUB. I certainly appreciate the hearing being held. It is good to have this technical changes act put together early, and I think it will be noncontroversial and proceed smoothly. We did get together with Mr. Archer, our ranking minority member, and took a look at this bill among a number of other things, and actually went over it section by section. It is certainly a healthy beginning, and we do support the effort that you are making. We are pleased that the Commissioner is here today.

Chairman JONES. I thank the gentleman. I would just say that if anybody has any red flags they wish to wave, please do that. Thank you.

Ms. McSteen.

**STATEMENT OF MARTHA McSTEEN, ACTING COMMISSIONER OF SOCIAL SECURITY, U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES, ACCOMPANIED BY LOU ENOFF, ACTING DEPUTY COMMISSIONER FOR PROGRAMS AND POLICY**

Mrs. MCSTEEN. Mr. Chairman and Members of the subcommittee, I am pleased to appear before your committee today to comment on H.R. 1641, the Social Security Minor and Technical Changes Act of 1985. I would like to make some very brief remarks and then I would be happy to answer any questions you may have.

I would like to take this opportunity to express our appreciation for the subcommittee's ongoing concern about improving the operation of the Social Security Program. Your recognition from time to time of the need for relatively minor, but nevertheless important, technical improvements in the program has been a valuable public service.

Further, Mr. Chairman, I commend the committee on the content of the bill we are discussing today. The majority of the provisions represent worthwhile technical and administrative improvements, and we do not find them objectionable. However, we have differences with respect to two of the provisions included in the bill. I would like to discuss these provisions briefly.

First, I would like to comment on section 2, the provision which would extend the authority included in section 505 of the 1980 disability amendments to conduct experiments and demonstration projects under both title II and title XVI. We share the committee's objectives, and agree that we need to move quickly. We are now ready to move forward on several projects which can only be carried out if the authority does not expire this June.

Rather than extending the 505(a) demonstration authority for only 5 years, we suggest that permanent authority be established. We also suggest that reports on these projects, as well as the SSI projects, be included in SSA's annual report to the Congress. We will be happy to work with you on this proposal and hope that it can be approved by the Congress in the near future.

We understand the concern that prompted inclusion of section 3, the provision that would reinstate Medicaid eligibility for widows and widowers who were disqualified due to the increase in benefits under section 134 of the 1983 amendments. However, there are a number of other factors that must be taken into account in considering the proposed amendment.

Widows and widowers affected by the 1983 provision:

May already be eligible for Medicaid because they live in States that cover medically needy aged, blind and disabled persons not eligible for SSI; and

Generally already have Medicare coverage or will have it by the end of this year.

Further, the proposal raises questions of equity because it provides special treatment for a closed group of individuals who were affected by the 1983 Social Security Amendments and does not provide similar Medicaid benefits for other persons in like financial circumstances.

And finally, the proposal may also present some administrative problems because the group affected could be difficult to identify, and a special rule will have to be applied to them over the years.

On balance, then, we do not support section 3 of H.R. 1641.

In general, we have no objection to the remaining provisions of your bill, and we defer to the Department of Treasury on section 5 of the bill. We do, however, have some technical comments on the legislative language for some of the provisions. We will provide our suggested language changes to the subcommittee staff.

Mr. Chairman, this concludes my prepared remarks. I will be glad to respond to any questions you may have.

Chairman JONES. Thank you very much, Commissioner. I wish you would get together, if you have not already, with our staff on the technical legislative changes.

Let me ask a few questions on features that are not in the bill on which we would like the administration's comment. First of all, I am sure you are aware of a problem that arises in 1987, when because the January 3 delivery date of Social Security checks falls on

the first Sunday in 1966, those checks will be delivered in December 1987. Thus, that may trigger several automatic provisions of law based on the resulting artificially low reserve levels for 1987.

It has been proposed that this bill include a provision to deem the January 3, 1988, checks delivered in 1988 for purposes of stabilizer fail-safe benefit taxation provisions of the law. Would you give me the administration's position on such a provision?

Mrs. McSTEEN. We would not oppose such a provision.

Chairman JONES. Second, Congresswoman Kennelly of the committee requestd we consider an amendment to allow a small group of Connecticut State Police to be covered by Social Security on a new-hire basis, similar to the coverage provided for Federal employees in the 1983 amendments. Could you give me your reaction to this proposal?

Mrs. McSTEEN. We generally do not favor legislation that is geared to a small group of people or singles out an individual State simply because it might be precedent-setting. However, we recognize that the State of Connecticut is very interested in this proposal, and we would defer to the State. We can handle it either way.

Chairman JONES. So you have no objections if that is what the State would prefer?

Mrs. McSTEEN. You are correct.

Chairman JONES. Thank you. Mr. Daub.

Mr. DAUB. I really have no questions. I want to be sure I understand what you would propose. You want, in section 2, then, to go to permanent law rather than extension of waiver authority for 5 years?

Mrs. McSTEEN. Yes; 5 years does set a limit, and we feel that the demonstration projects offer a great deal of potential. The attitude of the people in this country I think is now focused on addressing the disabled, and getting them back into the labor market. We would like to know that we could have a longer period of time to conduct these projects without having to come back to Congress for another extension.

Mr. DAUB. Mr. Chairman, is there someone on staff who could brief me after this about why we decided only on 5 years for a waiver? Are we trying to sunset something or do we want to have more control over something?

Chairman JONES. Irv, why don't you address that right now.

Mr. HYTNER. I think in the past CETA appeared as to why we would undertake demonstration projects, assumed that these would be carried out and produce results, so that when Social Security reported after 5 years of demonstrations we would be able to convert the results of those demonstrations into permanent legislation.

The reason for extending it for another 5 years is hopefully to get the results of some demonstrations to find out whether they produce sufficient evidence and guidance for the Congress to enact permanent legislation. We did not think it was necessary to make a permanent provision authorizing demonstrations. Some of the Congress might want to exercise continuing control over it.

Mr. DAUB. I appreciate that very much for the record, Irv.

I am interested, Mrs. McSteen, in the section 3 comment that you made, in your written testimony, to be sure that it shows as

well in the transcript of the hearings this afternoon. You do not support section 3, is that correct?

Mrs. McSTEEN. Precisely.

Mr. DAUB. Which would carve out a special treatment, you suggest?

Mrs. McSTEEN. Yes.

Mr. DAUB. Or a treatment for a category that would not otherwise have been singled out?

Mrs. McSTEEN. Yes. By the end of this calendar year, these persons will have reached age 65 or received Social Security disability benefits for at least the required 2-year period. So they will have Medicare coverage.

Mr. DAUB. Then why worry about the effect of section 3 in a de minimis sort of a way?

Mrs. McSTEEN. Well, because it does single out a group of individuals for more advantageous treatment than would be available to others in like financial circumstances. It might set a precedent so that other groups might say, "We have the same problem."

Mr. DAUB. But by the beginning of 1986——

Mrs. McSTEEN. 1986.

Mr. DAUB [continuing]. This category, created by section 3, would not benefit in an extraordinary way?

Mrs. McSTEEN. Perhaps not.

Mr. DAUB. As near as you——

Mrs. McSTEEN. Perhaps not, depending on the timing of the legislation.

Mr. DAUB. I have just been advised, and I think it is an important point, they gain the nursing home protection.

Mrs. McSTEEN. Through Medicaid.

Mr. DAUB. Through Medicaid?

Mrs. McSTEEN. Yes.

Mr. DAUB. That they would otherwise have had as I recall that part of the briefing. I think I have no other questions, Mr. Chairman.

Chairman JONES. Thank you. Mr. Coyne.

Mr. COYNE. I have no questions.

Chairman JONES. Mr. Gibbons.

Mr. GIBBONS. I have no questions.

Chairman JONES. The widows that you are talking about in that section, are they getting Medicaid under the medically needy programs in their States?

Mrs. McSTEEN. Some of them are. We have asked HCFA how many States actually provide Medicaid coverage to medically needy disabled widows and widowers, and it is our understanding that HCFA is doing a survey on this. Some States restrict their medically needy program to pregnant women and children, so we really don't have the definitive information for you. HCFA should have that information after the survey is completed.

Chairman JONES. We would like to have it. It is my understanding that this is a very minuscule problem in terms of numbers of people, and the purpose of this was to put these widows all on the same footing for the purposes of Medicaid, and that the Congress did not intend to deprive them of this when the 1983 act was passed.

Mrs. MCSTEEN. Yes.

Chairman JONES. So that is the purpose.

I wish you would perhaps rethink that. If we can get the administration's support for it let us know. But if it is de minimis, as Mr. Daub said, I think it would really be worthwhile if we can get your support.

Are there any other questions?

I thank you very, very much.

Mrs. MCSTEEN. Thank you.

[The following was subsequently received:]

HCFA SURVEY RESULTS

The survey by the Health Care Financing Administration [HCFA] indicates that there are 32 States in which disabled widows and widowers who are not eligible for SSI may qualify for Medicaid under medically needy programs.

Chairman JONES. The next witness is Rear Adm. David Cooney, president and chief executive officer of Goodwill Industries of America.

Welcome to the committee, Admiral Cooney. Your testimony will be included as written, and we would like to hear your summary.

**STATEMENT OF REAR ADM. DAVID M. COONEY [USN, RET.], PRESIDENT AND CHIEF EXECUTIVE OFFICER, GOODWILL INDUSTRIES OF AMERICA, INC.**

Admiral COONEY. Thank you very much, Mr. Chairman. I am delighted to be here. As you now, Goodwili Industries is the largest private sector provider of rehabilitation services in the United States, and I am happy to say as I look around the room, at the names, that most of the electoral territories represented here are also represented by local Goodwill Industries facilities.

Chairman JONES. You are very well represented.

Admiral COONEY. Yes, sir, and we are very proud of it. In fact, I visited the Tulsa Goodwill recently.

My comments will be addressed only to Section 2, the part which deals with the extension of demonstration projects for programs involving rehabilitation, and I am speaking from the standpoint of the part of the rehabilitation industry that would be involved in actually helping to design and execute those programs and to deliver the services to the clients which would result therefrom.

Basically, I think I would simply say I support the statements that have already been made by the Acting Commissioner, except I think the committee should note that the authority to conduct these experiments and demonstrations has been on the books for 4 years, and nothing—nothing—nothing has been done despite efforts on the part of the vocational rehabilitation community to elicit support and participation on the part of the Social Security Administration. So I am delighted to see that she is proposing to you that you should report annually because I think that is absolutely essential.

On the issue of making that permanent, I just heard that proposal a moment ago. I think that it should be recognized that at the time that the proposal was made to have these demonstration projects, another key change in Social Security support to the disabled took place. There was a change in the way the funding

flowed to the rehabilitation agencies that were delivering the services.

Today, as the operator of a rehabilitational agency, if you became disabled and were sponsored as a Social Security client, you would come to Goodwill. I would evaluate you, give you work adjustment training, on-the-job training, perhaps as an employee in a sheltered workshop or any one of a whole variety of other programs. I would then seek to place you, and once you were employed, you would have to work for 9 months before I would be compensated for the costs which I have incurred for your training.

The theory was that these demonstration projects were going to develop alternative means providing such training at reasonable cost and with reasonable speed. Right now we find the rehabilitation agencies, most of which are nonprofit, and most of which lose money on clients anyway, carrying all the risk of the Social Security clients. So we can't wait forever and forever and ever on these demonstration projects. I think there has to be a point at which we say: OK, we have learned everything we are going to learn out of that list. Let's take a look at the way the money flows to take care of the client and then if there is an opportunity for experimentation, fine. But this shouldn't go on forever.

I would summarize by saying I support fully the extension of the period proposed in the legislation. I wouldn't propose an additional period unless there is an understanding that that reporting was to be increased and fine tuned. I would tell you that now there are disabled people who are not getting care because rehabilitation facilities simply can't afford to carry the burden. And we have got to get on with this, and we have got to get on with it right now, so that is no longer true. That is my job and I have got a guilty conscience about it.

[The prepared statement follows:]

STATEMENT OF REAR ADM. DAVID M. COONEY (USN, RET.), PRESIDENT AND CHIEF EXECUTIVE OFFICER, GOODWILL INDUSTRIES OF AMERICA, INC.

Mr. Chairman and Members of the Subcommittee: I am David M. Cooney, President and Chief Executive Officer of Goodwill Industries of America, Inc. (GIA). This opportunity is appreciated to present the views of Goodwill Industries to the Subcommittee on legislation to extend authority for the Social Security Administration to initate experiments and demonstration projects designed to encourage Social Security Disability Insurance (SSDI) and Supplemental Security Income (SSI) recipients to return to work.

For your information, GIA is a national nonprofit corporation serving individuals with disabilities through 175 member rehabilitation facilities in North America and 44 affilitates in 31 counties around the world. These community-based organizations provide a wide variety of services to people with handicaps, including job training, vocational evaluation, transitional and full-time employment, independent living skills, career counseling, and private sector placement services.

We are the largest network of privately operated vocational rehabilitation facilities in the world. More than 71 percent of our revenues last year were derived from retail sales and industrial contracts for goods and services. These revenues, along with fees earned by providing services for government rehabilitation agencies, private corporations and insurance companies and from very limited public cash contributions, are used to provide vocational rehabilitation programs and employment for individuals with disabilities. In 1983, Goodwill Industries placed 7,500 people with handicaps into competitive, private sector employment through our placement programs, and employed over 28,000 workers with disabilities in our retail outlets, production facilities, and contract programs.

While I am pleased to have the opportunity to be with you to express our view on this important matter, I regret the necessity for this hearing. We should be discuss-

ing test results, not the potential of their taking place belatedly and finally. Goodwill Industries views Section 505(a) of the Social Security Amendments of 1980 (P.L. 96-265) as a very limited but positive approach to addressing some of the needs of social security recipients. For that reason, we strongly support a 5-year extension of this provision so that appropriate exploration of alternative methods of rehabilitating individuals can be undertaken. Such rehabilitation will return individuals with disabilities to gainful employment, and it will result in savings to the Social Security Trust Funds. Under this provision, the Secretary of Health and Human Services is given broad authority to waive compliance with the benefit requirements of Title II and XVIII of the Social Security Act in order to stimulate greater cost-efficient methods of getting people off the disability rolls and into productive employment. The provision, if properly and specifically administered, should not be viewed as a threat to anyone or any group because its major product will be the knowledge essential to the overall improvement of service delivery systems.

Goodwill Industries is not a stranger to this issue. We supported enactment of this provision in 1980, because we believe that the demonstration projects represented an incentive to rehabilitating individuals with disabilities. Unfortunately, other provisions of the 1980 Social Security Amemdments created very significant disincentives to rehabilitation. Specifically, the change in reimbursement policies whereby state rehabilitation agencies do not receive payment for rehabilitative services until a client has successfully completed a course of rehabilitation and achieved gainful employment for a period of nine months or more has resulted in fewer individuals being served because of the financial burdens imposed on the agencies by this requirement. Essentially this provision requires rehabilitation agencies to finance the carrying costs of rehabilitation and accept all the risks in an unrealistic situation, yet provides no reasonable rewards or incentives for participation. That provision should be examined and removed immediately.

But that is not the present business of this body. I mention it only in passing because these unfortunate requirements make the demonstration projects even more important. Section 505(a) had the potential for partially mitigating the negative impact of the other sections of the 1980 Amendments. Congress can ensure that this potential is realized by taking the steps to extend the authority for section 505(a) and to require absolutely that the Social Security Administration implement these projects.

Goodwill Industries and other vocational rehabilitation facilities have been trying since 1981 to work with SSA in design and implementation of the projects. GIA has engaged in frustrating series of meetings and correspondence with the Secretary of Health and Human Services and the Social Security Administration on initiation of the demonstration projects. Included in our communication was discussion and support for a project model utilizing the public and private sector rehabilitation agencies. Much to our discouragement, this project model never got beyond the discussion stage, we are told, because of reluctance of the various State agencies to participate. We can understand the reluctance of State vocational rehabilitation agencies to participate because the projects have never been clearly defined. We also have read the law carefully and see no requirement for such participation.

We are told that only one project under section 505(a) is operating. That project serves so few disability recipients that it cannot possibly satisfy Congress' instruction in section 505 that the demonstration projects "be of sufficient scope . . . carried out on a wide enough scale to permit a thorough evaluation of the alternative (rehabilitation) methods under consideration . . ."

We urge that Congress rectify this situation and extend Section 505(a) so that the projects can be undertaken on the scale intended by Congress. However, we believe the potential for success of these projects would be greatly enhanced if Congress takes several steps.

1. Require the Social Security Administration to submit a report to Congress each year updating progress on the demonstration projects;

2. Establish a strict timetable for initiation of the projects, with sanctions for failure to meet the schedule; and

3. Include sufficiently strong report language to accompany this bill instructing the Social Security Administration to correct the problems of the past and act quickly to fulfill the intent of Congress to explore alternative methods of vocational rehabilitation. The Social Security Administration should be instructed to involve the private sector directly in these projects and not rely solely on state vocational rehabilitation agencies to administer the projects.

It is my understanding that the Social Security Administration does not oppose extension of section 505. We hope this is indicative of new commitment to pursue initiation of these projects.

Again, I thank you for this opportunity to present the views of Goodwill Industries on this issue, and I would be pleased to respond to any questions.

Chairman JONES. I thank you very much. I understand that it has just been in the last 6 months that the demonstration project has been underway. Are you familiar with that?

Admiral COONEY. No, sir. As a matter of fact, I just recently learned that there was a demonstration project underway, and I am both surprised and a little bit offended that I haven't been consulted, because I have been the duty nag on this proposition for the last 4 years. We are involved with Social Security in a variety of other demonstration programs involving the learning disabled and that sort of thing.

We have met with the most polite response to our initiatives, but never any action. So I can't believe that the demonstration program is significant or involves any numbers of the scope that must be involved in this. We could spend the rest of the day—and I am not going to take your time—talking about all the potential types of demonstrations to evaluate whether it should be for profit, not for profit, in hospital, in facilities, protected work in the workplace.

There are just a whole variety of ways of doing it, and agencies like ours must be the ones who actually do this work. We are in the community. We are where the clients are. We are where the employees are, and we have the trained staff to do it. Social Security can't do it without us.

Chairman JONES. Mr. Daub.

Mr. DAUB. We have a very fine Goodwill program in Omaha, NE, as you know.

Admiral COONEY. And they have got all their bills paid, too, I might say.

Mr. DAUB. That is right. I have tried to figure out a way to help them get all their bills paid.

Admiral COONEY. We appreciate your support. They are growing and doing a very good job in the community.

Mr. DAUB. We got a Western Electric contract in there from Baltimore and did some things to help make it go.

Admiral COONEY. It passed through my office with the speed of light.

Mr. DAUB. I appreciate it. I think I am being persuaded, Mr. Chairman, thanks to his testimony and others, that the 5-year provision in the bill was wise, recognizing Congress should never give up its oversight to nudge things along and get annual and special reports. I think it makes a lot of sense, so we appreciate your testimony. I have read it and I know it is in the record, and we are glad you came today.

Admiral COONEY. Please don't put me down as being against innovation. The contrary is true. I just think we can innovate and never do anything, and that is what it is all about.

Mr. DAUB. Thank you, Mr. Chairman. I have no further questions.

Chairman JONES. Mr. Coyne? Mr. Gibbons?

Thank you very much, Admiral.

Admiral COONEY. Thank you very much, sir. Nice to see you.

Chairman JONES. Our next witness is Chris Koyanagi, representing the National Mental Health Association; Save Our Security

Disability Committee; Consortium for Citizens with Disabilities; Task Force on Social Security and Mental Health; Liaison Group Subcommittee on Disability; To Save Our Security Coalition; American Psychiatric Association; American Psychological Association; Association for Retarded Citizens/United States; International Association of Psychosocial Rehabilitation Services; National Alliance for the Mentally Ill; National Association of State Mental Health Program Directors; and National Mental Health Association.

**STATEMENT OF CHRIS KOYANAGI, APPEARING ON BEHALF OF SAVE OUR SECURITY DISABILITY COMMITTEE; CONSORTIUM FOR CITIZENS WITH DISABILITIES; TASK FORCE ON SOCIAL SECURITY AND MENTAL HEALTH; LIAISON GROUP SUBCOMMITTEE ON DISABILITY; TO SAVE OUR SECURITY COALITION; AMERICAN PSYCHIATRIC ASSOCIATION; AMERICAN PSYCHOLOGICAL ASSOCIATION; ASSOCIATION FOR RETARDED CITIZENS/UNITED STATES; INTERNATIONAL ASSOCIATION OF PSYCHOSOCIAL REHABILITATION SERVICES; NATIONAL ALLIANCE FOR THE MENTALLY ILL; NATIONAL ASSOCIATION OF STATE MENTAL HEALTH PROGRAM DIRECTORS; AND NATIONAL MENTAL HEALTH ASSOCIATION**

Ms. KOYANAGI. Thank you, Mr. Chairman. We certainly commend you for introducing this bill, and support your intentions to move it quickly through the Congress. However, I would like to raise just a small red flag with you, and ask you whether you would consider adding some additional provisions to the bill.

The groups that I am speaking for have been watching the implementation of last year's Disability Reform Act, Public Law 98-460, very closely, and there are a number of problems with that implementation. In fact, we would also like to urge you at some point later this year, to take a more extensive look into the implementation of that Act through oversight hearings.

Chairman JONES. We are planning to do that.

Ms. KOYANAGI. Good. We would be very pleased to see that. There are three provisions, though, that we think are really very minor, certainly not costly, and which we hope you will consider in a shorter timeframe, i.e., to add them to this bill.

The first involves individuals who were denied benefits since the beginning of the continuing disability investigations in March of 1981. Under the act as passed last year, these individuals are eligible, those who are mentally impaired, to come back and reapply for SSDI benefits and their insured status is protected. However, the difficulty is to reach those individuals to inform them of these changes. We in the disability organizations are certainly trying to reach those who are connected with our organizations, but we are well aware that we do only reach a small percentage of the individuals who could be affected.

We have asked the Social Security Administration to send a notice not only to the mentally impaired people who were terminated since March of 1981, but also to all individuals denied. That is necessary because of some of the other changes, like the multiple impairment change, which could affect the physically disabled and also because it is apparently very difficult to simply pull out the

mentally impaired. To pull out the mentally impaired would require a mechanical process of looking at every file, whereas a notice could be automatically sent off the computers to all of those who were denied. So we ask that you add to this bill a requirement that Social Security inform those individuals, so that they may know of what Congress did for them last year.

Our second request is that those individuals who are allowed to reapply for benefits under the new act be given a little longer to come into the district office to do so. This is necessary because the regulations are coming out at a very slow pace. Social Security is now about 6 months behind its planned schedule for issuing the mental impairment listings which were required to be revised by the Act, and until those are out, no final assessments can be made of these people who are reapplying. So we ask for a 6-months' extension to give them until April of next year to come back and reapply for benefits.

Finally, we would like to raise with this subcommittee an issue which is not under your subcommittee's jurisdiction, because it involves SSI beneficiaries. But the bill, as enacted last year, clearly stated that back benefits could be paid to those individuals who were erroneously terminated from the rolls and who suffered from a mental impairment.

As the bill and the conference reports are now being interpreted by Social Security, 12 months of back benefits are available to those on SSDI, but not to those on SSI, despite the fact that we think the statement of managers in the conference report was clear that Congress intended to apply this provision to SSI. Hopefully you will accept an amendment to this bill later in the full committee to provide back benefits to those indivduals on SSI as well as to those on SSDI.

Other than that, we are supportive of the bill, Mr. Chairman.

[The prepared statement follows:]

STATEMENT OF CHRIS KOYANAGI, ON BEHALF OF SAVE OUR SECURITY DISABILITY COMMITTEE; CONSORTIUM FOR CITIZENS WITH DISABILITIES; TASK FORCE ON SOCIAL SECURITY AND MENTAL HEALTH; LIAISON GROUP SUBCOMMITTEE ON DISABILITY; TO SAVE OUR SECURITY COALITION; AMERICAN PSYCHIATRIC ASSOCIATION; AMERICAN PSYCHOLOGICAL ASSOCIATION; ASSOCIATION FOR RETARDED CITIZENS/U.S.; INTERNATIONAL ASSOCIATION OF PSYCHOSOCIAL-REHABILITATION SERVICES; NATIONAL ALLIANCE FOR THE MENTALLY ILL; NATIONAL ASSOCIATION OF STATE MENTAL HEALTH-PROGRAM DIRECTORS; AND NATIONAL MENTAL HEALTH ASSOCIATION

My name is Chris Koyanagi, and I direct the federal relations activities of the National Mental Health Association, as well as chairing a coalition of over 100 national organizations, which are concerned about Social Security Disability Insurance and Supplemental Security Income programs. I am speaking today on behalf of the National Mental Health Association and for the organizations listed on the cover of this testimony most of which are concerned primarily with the impact of the SSDI and SSI programs on mentally impaired people.

The National Mental Health Association is a citizen advocacy organization, representing approximately one million consumer and citizen volunteers who are concerned about the treatment and prevention of mental illness and the promotion of mental health. Through over 600 local and state affiliates, Menal Health Association volunteers engage in a wide range of social advocacy and public education efforts, including assisting mentally disabled individuals to apply for disability benefits to which they may be entitled.

The organizations for whom I speak support section 4 of HR 1641. We welcome the substitution of a special disability Advisory Council for the regular quadrennial advisory council which was to be appointed this year and charged to look at disabil-

ity issues. Our organizations always supported the establishment of a special advisory council, as authorized in the bill approved by the House last year, HR 3755. The charges to this new Council require that individuals on that council have considerable expertise with respect to physical and mental disabilities, especially in the fields of vocational assessments and rehabilitation and medicine. We also strongly endorse the language in the bill which require representation on this council of organizations representing disabled people and members of the public.

There are, however, problems which have arisen since the enactment last year of the Social Security Disability Benefits Reform Act, PL 98-460. We would, therefore, like to suggest some additional amendments be added to HR 1641. The changes, we suggest, are minor in terms of their cost, but they would be extremely beneficial to those individuals adversely affected over the last four years by the harsh and illegal Continuing Disability Investigations which removed hundreds of thousands of disabled people from the SSDI and SSI rolls inappropriately.

### SSI RETROACTIVE BENEFITS

Under section 5 of PL 98-460, any mentally impaired individuals whose eligibility was terminated as a result of a continuing disability review between March 1, 1981 and June 7, 1983, or any individual whose initial claim for benefits was denied since March 1, 1981 and the enactment of the reform legislation, is given one year from the date of enactment to reapply for benefits. If the prior denial or termination is reversed, the legislation provides that benefits will be paid "only on the basis of the reapplication." This term means, when read with section 223(b) of Title II of the Social Security Act, that benefits may be payable for the 12 months preceding reapplication. It was clearly the intent of the conferees in their "Statement of Managers" that the retroactive payments would also be available to SSI recipients.

General counsel at SSA has ruled that there is no authority in Title XVI of the Social Security Act for retroactive payments to SSI recipients. Thus, the clear intent of the conferees is frustrated.

While correcting the problem is technically within the jurisdiction of the Subcommittee on Public Assistance and Unemployment Compensation, we raise the issue here because the opportunity to do so has presented itself in the form of this hearing and also because all the members of the Subcommittee on Social Security at the time signed the conference agreement to the Disability Benefits Reform Act.

The intent of PL 98-460 was to correct serious errors in the operation of the SSDI and SSI programs. To deny SSI recipients 12 months of retroactive benefits to which they would have been entitled if the program had been operated correctly would be wholly inconsistent with the intent of the legislation.

While we do not know exactly the number of people who would be affected by this modest correction, the total cost would be probably less than one million dollars.

We urge the Committee to make the change which would enable SSI recipients who reapply for benefits on the basis of a mental impairment to receive up to 12 months of retroactive payments.

### INDIVIDUAL NOTICES

The Social Security Administration has agreed to send out individual notices to all mentally impaired persons whose benefits where terminated as a result of a CDR. The notice will advise individuals of their rights under the new law and encourage them to reapply for benefits. The agency, however, has decided not to provide the same notice to individuals who have been denied benefits on initial application during the period March 1, 1981 to the enactment of the reform legislation. SSA contends that its computers cannot differentiate between denials to mentally impaired persons and those with physical impairments. To do so would require a manual examination of the files of each person who applied for benefits over the three-and-a-half-year period.

We agree with SSA that it would be cumbersome to undertake the manual examination of all files. We suggest, however, that rather than make that differentiation, SSA should send notices to all denials regardless of the basis for the denial. There have been sufficient changes both in the statute and the adjudicatory climate at SSA to justify notification to all denials that they may benefit from a re-examination of their condition. Since SSA will not undertake this effort on its own, we urge the Committee to instruct the agency to do so.

EXTENSION OF TIME FOR FILING REAPPLICATION

Under section 5, mentally impaired individuals eligible to reapply for benefits have one year from the enactment of the law to do so. The Social Security Administration, however, has been late in meeting the statutory deadline for revising the rules for determining eligibility or notifying people of their right to reapply. The revised mental impairment listing, for example, are three to six months behind schedule. Other requirements directly affecting the reapplication process, such as use of mental health professionals to do medical assessments, and rules for consultative examinations, are all similarly well behind schedule. Further, SSA only this month has begun sending out notices to people whose benefits were terminated urging that they reapply. As a result of the delays, mentally impaired beneficiaries and those who guide them are under increased difficulties in attempting to determine whether to file a reapplication or not. Given these continuing delays, we request the Committee to extend the time for reapplication by an additional six months. The extension will permit sufficient time for beneficiaries to be notified and will assure that SSA has put in place all the requirements needed for a full and fair re-evaluation of the eligibility of mentally impaired persons for disability benefits.

In conclusion, we urge the Subcommittee to review in more depth the implementation of PL 98-460 by SSA. We believe a number of the agencies actions and proposed actions run contrary to congressional intent. Oversight hearings by the Subcommittee would enable Congress to fully assess the impact of PL 98-460 as it is being implemented by SSA, so that corrective action could be taken if necessary.

Chairman JONES. Do you have any idea of what revenue amount we are talking about on that third point?

Ms. KOYANAGI. I understand that it is a very low cost estimate. I think we could get a firm figure from Social Security, but it is a few million dollars, perhaps $3 million.

Chairman JONES. We will have to check into that to see whether that is more than just a technical change. It may not be. But I would like the staff to look into that, and what jurisdiction we have over it. Mr. Daub.

Mr. DAUB. No questions.

Thank you very much. I think you did a good job of summarizing your comments, and we appreciate it.

Chairman JONES. I thank you very much. You did an excellent job. We will see what we can do to comply.

Ms. KOYANAGI. Thank you.

Chairman JONES. Are there any other witnesses?

If not, the hearing will be closed and we will return Wednesday at 9:30 when we will mark it up. We will mark up this bill and then we will go immediately into the hearings on quality of service.

[Whereupon, at 4 p.m., the hearing was adjourned.]

[Submissions for the record follow:]

STATEMENT OF ELISHA FREEDMAN, COMMISSIONER, CONNECTICUT DEPARTMENT OF ADMINISTRATIVE SERVICES

As Commissioner of the State agency that houses, among others, Connecticut's State personnel office. I urge your approval of the technical amendment to the Social Security Act which would allow the State to fully implement its collective bargaining agreement with the Connecticut State police union. I believe that there are certain particular circumstances that warrant assistance from the Congress in this matter.

The decision makers in our State believe that all employees should be covered by social security. In fact, over 95 percent of the present State employees are covered by social security. The State police are the only significant bargaining unit in state government not to have social security coverage. They are also the only unit in their tier of the State retirement system, which includes all hazardous duty personnel regardless of the agency of their employment, not to be covered by social security. The extension of this coverage to the State police will rationalize the State re-

tirement system and place all new State employees on an equal basis with regard to their hard earned retirement.

Many benefits included in the Social Security system cannot be replicated by my State or any private pension plan. Specifically, disability benefits, survivor benefits, protection against inflation are but a few of the desirable features of social security that cannot be found elsewhere. Lack of social security coverage for employees results in gaps in vital insurance coverage. These shortfalls can wreak havoc for an employee and families when disaster strikes.

Connecticut is one of the few States where State employees have the right to negotiate the details of their pension plan. In 1982 the State and the connecticut State police union entered into their first pension negotiations. A key proposal put forward by the State to CSPU was that all State police be covered by social security. This proposal was the subject of hard bargaining. Eventually, the police were convinced of the desirability of Social Security coverage. The police were not sufficiently convinced to accept Social Security coverage for present troopers, but were eventually persuaded to accept coverage for future state police. While this was certainly not the optimum outcome from the perspective of management the State felt that "half a loaf was better then no loaf" and under the circumstances the benefits were sufficient to merit acceptance of this proposition.

In order for future State police to be covered by Social Security, a change in the Social Security law is required to allow future members of the State police force to be covered by the Social Security System. I would request, on behalf of all of the parties involved in these negotiations, that the legislation you are considering to permit this coverage be enacted. Social Security coverage, as I have noted, cannot be duplicated in a supplementary pension program. The gaps in coverage can be devastating for an employee and dependents when it is not available but is needed. This legislation is in the best interest of future generations of Connecticut State police and their dependents.

We feel that a significant breakthrough was achieved at the collective bargaining table, one that is in the long term interest of all parties. We were able to agree that future State police should be covered by the system. The State of Connecticut was able to come close to full rationalization of its State retirement system. We ask your support in the passage of this legislation. As a further demonstration of Connecticut's support for this amendent, I am attaching a letter sent recently to Representative Barbara Kennelly in which the Connecticut State employees retirement commission, The State police union and the labor relations division of my office jointly urge passage of this amendment. Thank you for your consideration.

[Attachment]

STATE OF CONNECTICUT,
DEPARTMENT OF ADMINISTRATIVE SERVICES,
*Hartford, CT, March 15, 1985.*

Hon. BARBARA B. KENNELLY,
*House of Representatives,*
*Longworth House Office Building,*
*Washington, DC.*

DEAR REPRESENTATIVE KENNELLY: The State of Connecticut and the Connecticut State Police Union recently concluded collective bargaining negotiations over pension issues. One of the provisions of the new agreement specifies Social Security coverage for future State Police. The language of this provision is as follows:

"The parties agree that State Police hired on or after the date of legislative approval of this Agreement shall be covered prospectively by Federal Social Security as well as Tier 11 contained in this Agreement. The parties recognize that the Federal Law governing Social Security must be amended and Federal Rules and Regulations concerning this subject must also be adhered to. The parties agree that after a reasonable period of time, not to exceed 18 months, if Social Security Coverage cannot be obtained then the parties will return to the bargaining table to negotiate what, if any, changes in the pension agreement would be appropriate for State Police hired on or after legislative approval of this Agreement. If agreement cannot be reached, the issue shall be submitted to final and binding arbitration purusant to Public Act 83-533."

It is agreed by those responsible for the conduct of State's labor relations and retirement issues that Section 218 of the Social Security law needs to be amended to allow future Connecticut State Police to become members of the Social Security System.

The new language, which should be drafted by experts in the field of social security legislation, would read approximately as follows:

"Notwithstanding any other provisions of section 218, members of the Division of State Police within the Connecticut Department of Public Safety and who are members of tier 11 plan of the Connecticut State Employees Retirement System shall automatically be covered by the provisions of the Social Security System."

We also think it would be helpful if the amendment also included a statement to the effect that:

"The acceptance and approval of the collective bargaining agreement between the State of Connecticut and the Connecticut State Police Union constitutes satisfaction of the referendum requirements of Section 218, subsection (D)(3) of the Social Security Act."

In light of our contractual obligation and the fact that we will be adding to the Social Security System a substantial number of new employees who would not otherwise be covered, we respectfully request your assistance in effectuating the required changes in Social Security law.

Thank you for your patience and cooperation.

Very truly yours,

JAMES J. HEALY,
*Chairman, Connecticut State Employees Retirement Commission.*
ROBERT FINDE,
*Labor Relations Director.*
ROBERT KRZYS, *Esquire,*
*Connecticut State Police Union.*

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STATEMENT OF HON. BARBARA B. KENNELLY, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CONNECTICUT

Mr. Chairman, thank you for allowing me to testify today before the Social Security Subcommittee.

Due to a request made by the State of Connecticut through its Director of Labor Relations, the Connecticut State Police Union, and the Connecticut State Employees Retirement Commission which administers the pension system, I am supporting a narrow change in the Social Security law that will require all future State Police employees to take part in the Social Security system while existing employees remain out of the system.

Since 1967, more than 90 percent of the State of Connecticut's employees have been covered by Social Security. The only unit remaining that is not a part of the Social Security System is the State Police employees, who would like Congress to adopt a rule that would bring future employees into the system.

The State of Connecticut would like to have a uniform pension system that includes Social Security for all of its employees. To that end, it reached an agreement through collective bargaining with the State Police Union.

The parties agreed that if the Federal law could not be changed within 18 months after the contract was ratified by the legislature, then the issue would have to be reopened for arbitration. The contract was approved by the Connecticut General Assembly in June 1984.

There are two options under current Federal law for employees to join the Social Security System. Under one option, a referendum is held among existing employees. If a simple majority agrees to join the Social Security System, then all current and future employees are covered by Social Security. If the proposal fails in the referendum, then no existing or future employees are covered.

Under the second option, existing employees would decide individually whether to join the Social Security System while all future employees would have mandatory coverage.

The State of Connecticut did not choose the first option because it was unlikely that a simple majority of the State Police employees would approve of the proposal. It did not choose the second option because it would require separate retirement systems to be drawn for existing employees who joined the Social Security System and those who decided to remain out of the system.

The State of Connecticut's desire for a uniform pension system, the collective bargaining agreement, and the fact that the unit of State Police employees is the only one not currently covered by the Social Security System, has created a unique set of circumstances that necessitates that the State seek a change in Federal law. I want to stress also that a narrow change in law is being sought for these particular employees.

Both the State of Connecticut and the State Police Union have shown, through the collective bargaining process and ratification, that they believe this is the best way to handle the Social Security matter in the State.

Mr. Chairman, I urge that this change in the current law be considered and adopted.

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STATEMENT OF ROBERT J. MYERS, SILVER SPRING, MD

Mr. Chairman and Members of the Subcommittee: Ny name is Robert J. Myers. I served in various actuarial capacities with the Social Security Administration and its predecessor agencies from 1934 to 1970, being Chief Actuary for the last 23 years. In 1981-82, I was Deputy Commissioner of Social Security. Then in 1982-83, I was Executive Director of the National Commission on Social Security Reform.

I support the minor improvements and technical changes in connection with the Old-Age, Survivors, and Disability Insurance program that arre proposed to be made by H.R. 1641. I particularly support the change that corrects the income taxation of OASDI benefits of citizens of American Samoa, a subject which I have fully investigated. I suggest that, in addition, several other such changes should be made at this time. Primarily, these are for the purposes of creating greater equity and consistentency in the benefit and financing provisions, but one change proposed would prevent a very serious situation that will occur in December 1987.

OASDI benefit checks normally are issued and delivered to beneficiaries on the third day of the month following the month to which they relate. Special rules apply when such third day is a Saturday, Sunday, or holiday. As it so happens, the check for December 1987 will actually be issued and delivered on the last day of that month (and the same thing will occur for intermittent Decembers in subsequent years). This creates a significant inequitable situation for the roughly 15 percent of beneficiaries whose benefits will be subject to income taxation for 1987, because in that year they will have received 13 months of benefit payments, instead of the usual 12. This situation of the December 1987 benefit checks being issued in 1987 can cause other difficulties in connection with the fund ratios which are used to trigger certain financial transactions. In fact, under unusual circumstances, when the trust funds are low, financing problems might arise because of this situation since insufficient fund balances may be available to pay benefits on time. This situation is discussed in more detail in my memorandum of March 24, attached (along with appropriate remedial legislative language).

An anomaly in the retirement earnings test arises in connection with individuals who will attain age 65 in a particular year. The annual exempt amount differs as between persons age 65 and over and persons under age 65. For those who will attain age 65 in a particular year, the situation if benefits are claimed at the beginning of the year, as the law is now written involves uncertainty. If the individual survives to the beginning of the month of attainment of age 65, the higher exempt amount for persons age 65 and over is applicable, but if death occurs before then, the lower amount for persons under age 65 applies. Thus, at the beginning of the year, the individual who will become 65 in the year does not have any certainty as to the annual exempt amount and cannot plan his or her employment and retirement with any assurance. This matter, and a solution thereof, are discussed in more detail in my memorandum of February 8, attached.

Finally, I believe that a technical correction is needed in the provision dealing with trust-fund ratios so as to make the situation clear and so as to follow the intent of the original 1983 legislation. This matter is discussed more fully in my memorandum of January 24, attached (along with appropriate remedial legislative language).

MEMORANDUM

ROBERT J. MYERS,
*Silver Spring, MD, March 24, 1985.*

Subject: Technical correction needed in provision as to advance tax transfer under the OASDI Program

The 1983 Amendments provided that OASDI taxes (other than those with respect to state and local government employees) should be transferred to the trust funds at the beginning of each month, with appropriate interest payments by the trust funds to reflect this advance payment. This was done so as to recognize the cash-flow situation of the trust funds—the benefit payments largely going out at the beginning of the month and the tax receipts coming in uniformly during the month. As a result

of this provision, the trust funds are better able to meet their benefit obligations on time in the undesirable situation that their balances are relatively low.

There is one potential situation that is not handled by the provision as it is currently written and that could cause a serious problem at some time in the future if the trust fund balances become very low. Hopefully, this will never occur, but yet the contingency should be guarded against.

The particular situation arises with respect to benefit payments for a month when the third day of the following month occurs on a Monday holiday (such as can occur for September because of Labor Day occurring on the third of the month in some years). Under these circumstances, the checks would be mailed out for delivery on the last day of the previous month, and thus the advance tax transfer on the following day might be too late to justify the checks being mailed out as provided in the law.

I believe that this situation could be rectified by adding the following new paragraph to Section 708:

"(c) If, under the preceding subsections, benefit checks are mailed for delivery before the end of the month for which such checks are issued, then (1) the advance transfer of payroll taxes provided under the penultimate sentence of section 201(a) shall be made on the day of the month when such delivery is to be made, and the interest specified in the last sentence of such section 201(a) shall be determined from such day of transfer, rather than from the first day of the month in which such taxes are reported to the Secretary of the Treasury, (2) for purposes of section 86 of the Internal Revenue Code of 1954 (relating to taxation of Social Security and Tier 1 Railroad Retirement benefits) and related sections of such Code, such benefit checks shall be considered to be received in the month after the month for which they are issued, and (3) for purposes of section 709 and title II, in computing any ratios of trust-fund balances to amounts paid from trust funds, the actual experience data shall be adjusted to reflect what the situation would have been if such benefit checks had been mailed for delivery on the third day of the month after the month for which they are issued."

January 3, 1988 is a Sunday; January 2, 1988 is a Saturday; and January 1, 1988—a holiday—is a Friday. Accordingly, the checks for December 1987 will be issued and delivered on Thursday, December 31, 1987. Therefore, it would be highly desirable to enact the foregoing amendment in order to assure that there will be sufficient assets to finance the December 1987 benefits (and in order that none of the trust-fund-ratio triggers will "go off"). However, even more importantly, it is essential to enact this amendment because, otherwise, 13 months of benefits will be subject to income tax for 1987 (although only 11 months of benefits for 1988).

MEMORANDUM

ROBERT J. MYERS,
*Silver Spring, MD, February 8, 1985.*

Subject: An anomaly in OASDI retirement earnings test.

The retirement earnings test under the OASDI program provides different treatment for persons who are, in general, under the Normal Retirement Age and those who are at least that age (and under age 70, when the test no longer applies). This different treatment applies both to the annual and monthly exempt amounts and, beginning in 1990, to the amount of benefits withheld per dollar of earnings in excess of the annual exempt amount.

The actual application of this general procedure produces an undesirable situation for persons who attain the NRA in the particular year under consideration. The law provides that persons who live until the month in which they attain (or would attain) the NRA are treated as "NRA or over" cases, but that, if they die before such month of attainment, they are treated as "under NRA" cases.

The result of this situation is that an individual who files for benefits at (or before) the beginning of the year in which age 65 will be attained (unless prior death occurs) cannot be told with any accuracy how the retirement earnings test will apply during that year. If the person survives until the month of attainment of age 65, the more liberal conditions will apply; if these are relied upon, but prior death occurs, an overpayment of benefits could result. The Social Security offices are placed in a very difficult position, because either they will keep the explanation simple by relating it to the "NRA or over" conditions, or they will complicate the matter by explaining what might happen in the event of death before the month of attainment of NRA (and the beneficiary will be uncertain as to what course of action to take).

The solution to this anomalous situation is to make the "NRA or over" conditions applicable to persons who would attain the NRA in the year if they survive for the whole year. This would involve some increase in the cost of the program, but actually only slight.

MEMORANDUM

ROBERT J. MYERS,
*Silver Spring, MD, January 24, 1985.*

Subject: Technical corrections needed in fund-ratio provisions of Social Security Program.

The 1983 Amendments established four sets of triggering devices based on trust-fund ratios (see attached sheet describing them). Due to the haste of the legislative action, the provisions are not completely clear in all instances with regard to the treatment of (a) advance payroll tax transfers and (b) income-tax-on-benefits collections. This is the case for the reports on the fund balances being low (item 3) and on the COLAs being based on the lower of price or wage increases (item 4), both of which are determined as of the beginning of the calendar year (the other two elements being determined at other times). Specifically, several events all occur "at the beginning of the calendar year", and it is a question of which order they occur they occur!

I believe that the following changes might be made (new material italicized:)

(A) Report on Fund Balances being Low—section 709(b). Amend paragraph (1) to read: "the balance in such Trust Fund, *including the taxes transferred under section 201(a) on the first day of the year (but not including any amounts transferred on such first day in accordance with section 121(e)(2) of the Social Security Amendments of 1983 (relating to proceeds from income taxation of social security benefits))*, reduced by the outstanding amount of any loan (including interest thereon) theretofore made to such Trust Fund under section 201(l) or 1817(j), *and increased by the outstanding amount of any loan (including interest thereon) theretofore made to any Trust Fund under section 201(l) or 1817(j)*, as of the beginning of such year, to".

This change would include the advance tax transfers in the fund assets—to parallel the treatment for the COLA provision. This might have been the congressional intent (if there was to be procedure consistent with what is done as to advance tax transfers under section 215(i)(1)(F), relating to COLAs based on the lower of price or wage increases). However, under a strict reading of the law, this cannot be done (and, in fact, by not being mentioned specifically in section 709(b)—as is done in section 215(i)(1)(F)—seems not to be so included). Also, the change makes it clear that the advance transfers of income-tax-on-benefit receipts are not to be included (as the law is now being interpreted).

Further, a change is made to include, as an "asset" of the Trust Fund, any loans which it has made to any other Trust Fund. This is quite proper because such loan is a true asset of the Trust Fund (even though not available for immediate payment of benefits).

In balance, I believe that it is not necessary from a policy standpoint to include the advance tax transfers in making this test of the size of the fund balance (so that the test will then be more stringent). If this result is desired, then "not" should be inserted before "including" in the second line, and "but" in the third line should be changed to "and".

(B) COLAs based on Lower of Price or Wage increases—section 215(i)(1)(F). Amend item (i) by inserting after "including the taxes ferred under section 201(a) on the first day of such year" the following: "*(but not including any amounts transferred on such first day in accordance with section 121(e)(2) of the Social Security Amendments of 1983 (relating to proceeds from income taxation of Social Security benefits))*".

This change is merely to make it clear that the advance transfers of income-tax-on-benefits receipts are not to be included (as the law is now being interpreted). It does not seem desirable to include loans to other Trust Funds (in this case, only to HI—which, anyhow, seems most unlikely before 1988), because the important matter is the amount available for immediate payment of benefits.

## Appendix F

### Funding Ratios as OASDI and Medicare Triggering Devices [1]

The provisions involving triggering devices in the OASDI and HI programs as a result of the 1983 Act are as follows:

1. Prohibition against making interfund loans between the OASDI Trust Funds and the HI Trust Fund (possible only through 1987) when the balance in the lending fund is relatively low.
2. Mandatory repayment to the HI Trust Fund of any outstanding loans held by the OASDI Trust Funds (which must be done by 1990) when their balances are relatively sizable—and vice versa.
3. Submission of reports by the Boards of Trustees of the OASI, DI, HI, and SMI Trust Funds whenever any of their fund balances are too low; in such cases, the Trustees are to recommend statutory remedies and to specify the extent to which benefits must be reduced or payroll taxes increased, or both.
4. Basing the automatic cost-of-living adjustment for OASDI benefits for December of a particular year on the lower of (a) the increase in wages (from the second preceding calendar year to the preceding calendar year) or (b) the CPI increase (from the third quarter of the preceding year to the third quarter of the current year).

In all instances, the triggering is based on trust-fund ratios that, in general, relate annual outgo to the trust-fund balance. In practice, the triggering mechanism is slightly different for each of the four provisions. Table 1 lists their pertinent features for OASDI. Table 2 lists these for the two Medicare funds.

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### Statement of James A. Cox, Jr., Executive Director, National Association of Rehabilitation Facilities

#### SUMMARY

Public policy should be focused on maximum placement of disabled people in competitive employment. The existing SSDI and SSI programs should be examined to determine how additional, constructive incentives can be provided to help beneficiaries to become as self sufficient as posible. NARF supports HR 1641, specifically Section 2 and 4 which move toward this objective.

#### I. SECTION 2 EXTEND THE DEMONSTRATION AUTHORITY

Section 2 of HR 1641 proposes to extend the waiver authority for demonstration projects under the SSDI, SSI and Medicare programs until 1990. This authority was established in Section 505 of the Social Security Disability Amendments of 1990 (PL 96-265). The Department of the Health and Human Services has not utilized this authority to pursue its objectives of studying early referral of SSI and SSDI applicants and beneficiaries for rehabilitation services or to stimulate new forms of rehabilitation.

NARF supports extension of the waiver authority and urges the Subcommitte to direct the Secretary to conduct these projects immediately.

#### II. DISABILITY ADVISORY COUNCIL

Section 4 of HR 1641 proposes to establish a special Disability Advisory Council which would study and report on the effectiveness of vocational rehabilitation programs for SSI and SSDI beneficiaries, immediate referral of applicants and recipients for vocational rehabilitation services, and the criteria to determine the probability of benefiting from vocational rehabilitation services.

NARF supports establishing the Disability Advisory Council. NARF recommends that membership on the Council include representatives from rehabilitation facilities.

#### STATEMENT

Mr. Chairman: My name is Allen Cox. I am the executive director of the National Association of Rehabilitation Facilities (NARF). NARF is the national voluntary member organization of community based rehabilitation facilities. We have over 500 members who provide comprehensive rehabilitation services to over 400,000 disabled individuals annually. Many of these clients are Social Security Disability Insurance (SSDI) and Supplemental Security Income (SSI) disability beneficiaries. Our facili-

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[1] This material, in slightly different form, was contained in an article by the author in *The Actuary* (the newsletter of the Society of Actuaries), March 1984.

ties provide a complete range of rehabilitation services—vocational, developmental as well as physical medicine and rehabilitation.

Our statement is in support of HR 1641, the Social Security Minor and Technical Changes Act of 1985. Several sections of HR 1641 will continue to broaden the opportunities for disabled citizens to return to gainful employment. These issues are of great importance to disabled citizens and they deserve our full consideration.

NARF's position is that public policy should be focused on maximum placement of disabled people in competitive employment. There are large numbers of disabled people who can return to the work force if provided with early referral and proper rehabilitation services. There are also severely disabled people who are unlikely to achieve such placements but who may benefit, financially and otherwise, from supervised employment in the community or sheltered employment designed to utilize their abilities. With respect to the SSI and SSDI programs, we have historically supported changes in the programs which provide incentives to help beneficiaries become self sufficient, but not through a system that simply eliminates benefits to do so. My specific comments on the bill follow.

I. SECTION 2—DEMONSTRATION PROJECTS INVOLVING THE DISABILITY INSURANCE PROGRAM

The SSDI and SSI programs provide benefits and rehabilitation services to people determined to be disabled and therefore unable to work. Theoretically, they contain incentives to seek employment however, several aspects of the program actually act as disincentives to employment. The Disability Amendments of 1980 (PL 96-265) went a long way to create new incentives for beneficiaries to obtain and maintain employment. NARF supported that measure.

The Disability Amendments of 1980 established in Section 505 a demonstration authority which allows the Secretary of the Department of Health and Human Services to waive certain requirments of the SSDI/SSI and Medicare programs in order to conduct certain experimental or demonstration projects. That demonstration authority allows the Secretary of HHS to study several objectives including determining the relative advantages and disadvantages of various alternative methods of treating work activity under SSI and SSDI, earlier referral of beneficiaries to rehabilitation and greater use of employers and others to develop, perform and otherwise stimulate new forms of rehabilitation with the objective of savings being accrued to the trust fund. During consideration of PL 96-265 NARF testified in support of the then proposed demonstration authority.

To date, unfortunately the Department of Health and Human Services has not sought to implement these demonstration projects thereby leaving untouched several disincentives and problems in the programs which need to be examined.

Given the nature of the disability determination process, a beneficiary is not referred for rehabilitation services until many weeks or months after the onset of the disability. First, the state disability determination office must make a determination of disability. This is done, at least for SSDI applicants, after the five month waiting period has expired. At the same time the disability determination is made, the state DDS office will consider whether the person has vocational rehabilitation potential. If according to HHS critieria the state DDS office feels the person will be rehabilitated he is referred to a state vocational counselor. If the person doesn't get lost in the paper shuffle, the vocational counselor will conduct an evaluation and eventually refer the person for a program of services under the beneficary rehabilitation program (BRP). In certain cases this delay in referral and receipt of services may actually compound the severity of the disability.

An additional problem in providing services was created by the 1981 amendments to the beneficiary rehabilitation program. Prior to the Omnibus Budget Reconciliation Act of 1981, the beneficiary vocational rehabilitation program authorized funds to be paid to states agencies for services delivered to SSDI and SSI beneificaries. The purpose of the program was to return them to work, thereby resulting in savings to the trust fund. In 1981, $124 million was available for both SSI and SSDI beneficiaries and approximately 159,000 people were served. All studies of the program have shown it to be cost effective.

The Omnibus Budget Reconciliation of 1981 amended the program and, in our opinion, rendered it almost useless. The new provisions provides that states are to be paid for successful rehabilitations. A successful rehabilitation is defined as a person performing substantial gainful activity for nine continuous months. While the amendments made to the program by the Disability Benefits Reform Act of 1984 are helpful, a major problem remains.

It has been our experience that since the program has been amended, states and others have very little incentive to participate in it. The Adminsitration has not made sufficient funding available. Actual expenditures in 1983 were only $4 million and 1984 estimated expenditures were $6 million. Second, States and facilities are paid on the basis of successful rehabilitations, in the event of medical recovery or for failure to cooperate in the receipt of services. The assumption in the 1981 amendments appears to have been that States are expected to use funds under Title I of the Rehabilitation Act to provide services. These two programs address different parts of the total disabled population. Title I of the Rehabilitation Act is formulated to serve all disabled individuals who are referred to State agencies with a priority that state agencies serve the more severly disabled. People served under the beneficiaries rehabilitation program are those who have been determined to be able to benefit from a vocational rehabilitation program, regain the ability to work, and will no longer require benefits. Usually this population is not the more severely disabled client. Given the virtual elimination of the program and little increase in funds under the Rehabilitation Act, many States are turning away clients.

While the 1984 amendments are helpful in expanding the circumstances for which services would be paid, they leave open the question of covering the cost of delivering services for unsuccessful rehabilitations. If the program is going to reimburse facilities or states only for the services outlined above, both facilities and states will be at risk for good faith efforts to rehabilitate beneficiaries that do not result in a successful rehabilitation. While agencies may use the basic state grant funds, such funds would then be depleted for other clients. Facilities, however, would have to pay for funds for services out of their own capital, which means they would be decreasing their service capacity. It would be imprudent for the facility to accept referrals if it must pay the cost whether or not the rehabilitation was successful, unless there is an incentive for a financial payment commensurate with the risk.

During consideration of the 1980 amendments, NARF urged that the vocational rehabilitation program be amended to allow direct referral of beneficiaries to public and private nonprofits organizations for an evaluation of rehabilitation potential and delivery of services as early as possible during the disability process. An evaluation should occur at the time of the initial contact with the district SSA office. Interim rehabilitation services should be delivered during the waiting period for a determination of disability, thereby improving the prospect for a successful rehabilitation. We are discussing a project with HHS which would provide for direct referral to public and private organizations at the time of application for disability, amend the BRP to provide a financial incentive to facilities to participate and result in direct savings to the trust fund.

NARF firmly believes that such demonstration projects should be undertaken particularly with respect to examining the benefits of vocational rehabilitation and early and direct referral to rehabilitation facilities for evaluation and services. Tnerefore, we support the extension of the waiver authority in section 505(a).

### II. SECTION 4, DISABILITY ADVISORY COUNCIL

Section 4 of H.R. 1641 would establish a special disability advisory council to be appointed within 90 days of enactment.

When the Social Security Disability Benefits Reform Act of 1984 was being considered, the House bill proposed a separate advisory council examining various aspects of the SSI and SSDI disability programs. The Act requires the statutorily required Advisory Council on Social Security to examine a range of issues pertaining to disability including the beneficiary rehabilitation services program and the benefits of rehabilitation services.

NARF supports section 4 to establish a separate disability advisory council and that the advisory council examine the same issues required to be examined by the council as stated in the Social Security Disability Benefits Reform Act of 1984.

However, membership on the council should include representatives of the rehabilitation facility community. To that end we recommend that line 21, page 6, add "rehabilitation facilities" after "organizations representing".

Mr. Chairman, these are our impressions of what can be done to continue to help disabled SSDI and SSI beneficiaries be self-sufficient within the scope of H.R. 1641. As a society we should never give up on anyone and leave them in a dependent state and without any hope for improvement or negate it with complex and conflicting programs. In both the long and short run, the programs can bring savings in the form of fewer benefits paid out and immeasurable personal savings in the form of personal independence.

STATEMENT OF EILEEN P. SWEENEY, STAFF ATTORNEY, NATIONAL SENIOR CITIZENS LAW CENTER

I am a staff attorney at the National Senior Citizens Law Center (NSCLC). This statement is being submitted on behalf of clients of NSCLC who have been the unintentional victims of Congress' decision in 1983 to increase the benefits of disabled widows.

NSCLC is a national legal support center funded by the Legal Services Corporation. We provide legal services advocates with assistance in addressing the legal needs of their elderly and disabled clients. I specialize in Social Security and Supplemental Security Income issues.

I am testifying today in support of section 3 of H.R. 1641, while suggesting a few modest amendments to further strengthen the provision. Section 3 is extremely important to a small group of disabled widows. It would remedy a very serious problem which they have faced as a result of section 134 of P.L. 98-21. In that provision, the Congress increased the minimum benefit amount which a disabled widow could receive from 50 percent of the primary insurance amount (PIA) to 71.5 percent of PIA. The provision took effect in January, 1984 and applied to all disabled widows then receiving benefits as well as those who later became eligible for benefits.

The women who benefitted from this change all had two things in common: first, they were incredibly indigent and second, they were incredibly disabled.

Because the disability test for a widow is much more restrictive than the test for workers [compare 42 U.S.C. § 423(d)(2)(A) with § 423(d)(2)(B)], all of these women met the disability test for Supplemental Security Income (the worker's test), 42 U.S.C. § 1382c(a)(3)(B). And, because their incomes (and resources) were so low, many were also eligible to receive a small SSI benefits along with their Social Security disabled widow's benefit. Of greatest relevance here, receipt of SSI rendered them eligible for much-needed Medicaid coverage.

When section 134 of P.L. 98-21 was implemented, effective January, 1984, many of the most indigent disabled widows actually found that their financial circumstances worsened: they did receive an increase in the social security benefit, but the increase generally rendered them ineligible for SSI by a few dollars. The loss of SSI meant the loss of Medicaid. For many, the results have been life-threatening and are forcing women to make unpleasant, and otherwise unnecessary, choices to move into institutions in order to regain Medicaid coverage.

The cases of five women clearly illustrate both the urgency and absurdity of the current situation:

Mrs. F of Nashville, Tennessee is a disabled widow who was 60 years old when her benefits were increased as a result of P.L. 98-21. She requires oxygen every two hours as well as ten prescriptions monthly. Before her benefits were increased, she received a $296 widow's benefit and $38 SSI monthly, totalling $334 monthly. As a result of P.L. 98-21, her widow's benefit was increased to $337. In a letter to a local newspaper, she stated:

". . . Consequently I lost my Medicaid, which has paid my Medicare Part B deductible and seven of my prescriptions. Without Medicaid I cannot afford any kind of emergency medical services since the deductibles and co-payments of Medicare are beyond my meager budget. If I were hospitalized, there's no way in the world I could come up with the $356 required by Medicare.

"Before I received my raise, I was getting a total of $334 a month including SSI. Now I get $337 total, but I no longer have Medicaid. I am sure that Congress passed this raise with the intention of helping people like me, but it has had the opposite effect. I am completely devastated and no one offers any hope. . . .

"I cannot survive without Medicaid. But the only way I can be eligible for Medicaid benefits is to go into a nursing home. This will cost the state of Tennessee about $900 a month. Living here in my small apartment, with a Medicaid card, I was costing the state only a tiny fraction of that amount . . . I cannot face the prospect of going back to the nursing home, and I am desperate." (The Nashville Tennessean, May 22, 1984)

Mrs. H resides in LaFollette, Tennessee. She is an insulin dependent diabetic and also suffers from Parkinson's disease and cataracts. Prior to implementation of P.L. 98-21, she received $299 in disabled widow's benefits and $35 SSI monthly. She also received Medicaid and Medicare. As a result of P.L. 98-21, Mrs. H's widow's benefit increased to $402 monthly, from which SSA deducted $14.60 for her Medicare premium. She thus lost eligibility for SSI and Medicaid. Prior to that time, Medicaid paid $175 each month for her medications. Therefore, despite the fact that her widow's benefit increased by almost $90 each month, the loss of Medicaid coverage means that Mrs. H actually has $85 less income each month as a result of P.L. 98-21.

Mrs. A suffers from multiple severe impairments. She resides in Iowa. Her prescription costs, on a monthly basis, are a minimum of $311.00. In addition, Mrs. A has severe respiratory problems which require her to have oxygen tanks in her home. Prior to January, 1984, Mrs. A received both a disabled widow's benefit and a small SSI benefit which rendered her eligible for Medicaid. In January, 1984, as a result of P.L. 98-21. her widow's benefits were increased by $40.00, causing her to lose over $311.00 monthly in Medicaid coverage for her prescriptions. While her family has been attempting to assist her in covering her additional medical costs, they are not able to meet all of her needs. Her legal representative writes that, "without Medicaid coverage, she will have no choice but to move into a nursing home."

Mrs. W resides in Wyoming. As a result of the increase in disabled widow's benefits, she is now over-income for SSI by sixty cents (60¢) and has lost her Medicaid coverage.

Mrs. M resides in Virginia. She has received both disabled widow's benefits and SSI since 1975. In December, 1983, she received $287.00 in widow's benefits and $37.30 in SSI, totalling $324.30. In addition, Medicaid paid her Medicare Part B premiums. In March, 1984, her widow's benefit was increased by $49.00 to $346.00 (she had also received a cost of living adjustment in January, 1984), retroactive to January. She lost eligibility for SSI and Medicaid. As a result, SSA also began deducting her Medicare Part B premiums from her check. As a result, her actual cash benefit was $331.40, $2.60 less than she previously received. Her loss of Medicaid precluded her from obtaining urgently needed home health services.

RECOMMENDATIONS

Section 3 of H.R. 1641 represents a very good solution to this problem. The disabled widows who were also receiving SSI before implementation of P.L. 98-21 would be entitled once again to receive Medicaid. In addition, SSA would be required to notify each state of the individuals who may qualify to benefit from the provision. The states would then inform the individuals of their rights under the provision.

There are, however, a few amendments which would render the provision of even greater use to the disabled widows affected. The bill provides that a widow cannot apply for Medicaid benefits until "after the close of the second month following the month in which this Act is enacted and before the close of the fourteenth month following such month." (p. 5, lines 10-13)

*Recommendation No. 1:* Permit the widow to apply immediately after enactment. As described in the five cases above, these women are in desperate condition. They need relief as quickly as possible. It will take the state agency some time to process the claim, so it would be particularly helpful if the element of delay currently written into the provision was deleted.

*Recommendation No. 2(a):* Require SSA to issue the notices directly to the individuals potentially affected by the provision. As SSA knows who the widows are who will be affected by the provision and, under the provision, would compile lists for the states, it would be very easy and much more expeditious for SSA to simply issue a notice directly to the disabled widows rather than expecting fifty different state agencies to issue the notices. It would be very difficult to ever ascertain whether all of the states had ever issued a notice to all eligible widows or to assure that the notices issued were understandable. While SSA's record on issuing understandable notices is, at best, mixed, there would seem to be a greater likelihood that the disabled women would learn of their rights under the provision in more timely fashion as the result of an SSA centrally-issued notice.

*Recommendation No. 2(b):* Include timeframes for the SSA notices to the States and the State notices to individuals potentially covered by the provision. [This is an alternative to No. 2(a), although not as desirable.] As noted above, the widow is given 12 months to apply for relief under the provision. To assure the greatest time for applying, as well as that SSA and the States do not delay in issuing their respective notices, it would be very helpful if mandatory timeframes for completion of each agency's work are included. Given how small the group of affected beneficiaries is, one month should be adequate for SSA to issue the lists and another month more than adequate for the states to issue the notices.

The bill provides that the widow will only be eligible for any month "which begins more than 2 months after the date of the enactment of this Act" (page 3, lines 20-22).

*Recommendation No. 3:* Move up the date of eligibility to the date the person last received Medicaid or, at a minimum, to the date of enactment. These disabled

widows have been without urgently needed Medicaid coverage since early in 1984. While some may have been forced to resort to nursing homes in order to obtain Medicaid coverage for their health care costs, it is very likely that others are still struggling to meet their health care costs and that they have incurred health expenses since early 1984 which would have been covered by Medicaid, but for P.L. 98-21. It would be extremely helpful if the provision was amended to permit the widows to obtain retroactive coverage for this finite period of time in order to cover those costs.

If this is not possible, there does not seem to be any good reason to defer eligibility until the third month after enactment, as is currently provided for in the bill. This will simply prolong the agony of this very small group of women. It would be far more beneficial to have eligibility run from the date of enactment.

Thank you for considering these suggestions.

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